

1 KEVIN SIMMONS (P-23096)

2 L.A.C.S.P C2-124

3 P.O. Box 4610

4 LANCASTER, CA 93539  
5 ACTING IN PROPER.

7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA

10 KEVIN SIMMONS,  
11 PLAINTIFF,

CASE NO. 2:16-CV-02858 R-KES

12 v  
13 G. ARNETT, et al.  
14 DEFENDANTS,  
15 SGT. ROMO, NURSE M. LOPEZ  
16 DEFENDANTS,

PLAINTIFF'S SECOND AMENDED  
COMPLAINT STATING EIGHTH  
AMENDMENT EXCESSIVE FORCE, DELIBERATE

INDIFFERENCE, CRUEL UNUSUAL PUNISHMENT, AND  
DENIAL OF PROCEDURAL DUE PROCESS CLAIMS.

DATE FILED: APRIL 26, 2016

JUDGE: KAREN E. SCOTT.

19 COMES NOW THE PLAINTIFF KEVIN SIMMONS, WITH HIS  
20 SECOND AMENDED COMPLAINT. ACTING IN PROPER.

25 DATE: APRIL 15, 2018

26  
27 Kevin Simmons  
28

1 KEVIN SIMMONS (P-23096)

2 L.A.C.S.p C2-124-

3 P.O. BOX 4610

4 LANCASTER, CA. 93539  
ACTING IN PROPER.

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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA

8

9 KEVIN SIMMONS,  
10 PLAINTIFF

CASE NO. 2:16-CV-02858 R-KES

11 PLAINTIFF'S SECOND AMENDMENT

12 COMPLAINT FOR EXCESSIVE FORCE,

13 DELIBERATE INDIFFERENCE, CRUEL AND UNUSUAL  
14 PUNISH, DENIAL OF PROCEDURAL DUE PROCESS  
15 CLAIMS.

G. ARNETT ET AL.

Sgt. ROMO, AND

NURSE M. LOPEZ,  
16 DEFENDANTS

DATE FILED: 4-26-2016

JUDGE: HONORABLE KAREN E. SCOTT.

17

18 COMES NOW PLAINTIFF KEVIN SIMMONS, WITH HIS  
19 SECOND AMENDED COMPLAINT TO CONSOLIDATE  
20 DEFENDANT'S ARNETT, SGT. ROMO AND NURSE M. LOPEZ.

1 DEFENDANT G. ARNETT, WORKS AT LANCASTER PRISON CALIFORNIA  
2 44750 60<sup>TH</sup> STREET WEST, LANCASTER, CA. 93539  
3 AS THE C-4 BLD. GUN TOWER OFFICER.

4 THE DEFENDANT IS BEING SUED IN HIS INDIVIDUAL CAPACITY  
5 WHILE ACTING UNDER COLOR OF LAW ASSIGNED TO C-4 BLD. GUN  
6 TOWER ON 2ND. WATCH NOV. 28, 2013.

7 2.) DEFENDANT SGT. ROMO, WORKS AT LANCASTER PRISON CALIFORNIA  
8 44750 60<sup>TH</sup> STREET WEST, LANCASTER, CA. 93539  
9 AS THE C-FACILITY YARD SGT.

10 THE DEFENDANT IS BEING SUED IN HIS INDIVIDUAL CAPACITY  
11 WHILE ACTING UNDER COLOR OF LAW ASSIGNED TO C-FACILITY YARD  
12 SGT. ON 2ND. WATCH NOV. 28, 2013.

13 3.) DEFENDANT NURSE M. LOPEZ, WORKS AT LANCASTER PRISON CALIFORNIA  
14 44750 60<sup>TH</sup> STREET WEST, LANCASTER, CALIF. 93539  
15 AS THE C-FACILITY MEDICAL NURSE.

16 THE DEFENDANT IS BEING SUED IN HIS INDIVIDUAL CAPACITY  
17 WHILE ACTING UNDER COLOR OF LAW ASSIGNED TO C-FACILITY MEDICAL  
18 NURSE ON 2ND. WATCH NOV. 28, 2013.

19 1. DEFENDANT G. ARNETT, IS BEING SUED FOR \$1,000,000 PUNITIVE  
20 DAMAGES AND \$500,000 COMPENSATORY DAMAGES = \$1,500,000.

21 2. DEFENDANT SGT. ROMO, IS BEING SUED FOR \$750,000 PUNITIVE  
22 DAMAGES AND \$250,000 COMPENSATORY DAMAGES = \$1,000,000.

23 3. DEFENDANT NURSE M. LOPEZ, IS BEING SUED FOR \$750,000  
24 PUNITIVE DAMAGES AND \$250,000 FOR COMPENSATORY DAMAGES  
25 = \$1,000,000

26 LAW SUIT TOTALED AT \$3,500,000

1 THE STATING OF EIGHTH AMENDMENT  
2

3 CLAIM OF EXCESSIVE FORCE  
4

5 ON NOV. 28, 2013  
6

7 PLAINTIFF ASSERTS A CLAIM AGAINST DEFENDANT G.ARNETT,  
8 FOR EXCESSIVE FORCE IN VIOLATION OF HIS EIGHTH AMENDMENT  
9 RIGHTS TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT,  
10 ARISING FROM BEING PHYSICALLY ASSAULTED.

11 PLAINTIFF WAS APPROACHED BY A MEXICAN INMATE BY THE  
12 NAME OF MURRILLO, INMATE MURRILLO, SUCKER PUNCHED THE  
13 PLAINTIFF IN THE SIDE OF HIS HEAD AND AT THE SAME TIME  
14 DEFENDANT G.ARNETT, FIRED HIS FIRST SHOT HITTING THE  
15 PLAINTIFF IN HIS LEFT LEG, THE PLAINTIFF WAS ALREADY  
16 DAZED FROM THE PUNCH AND THE ROUND FROM THE SHOT  
17 KNOCKED THE PLAINTIFF TO HIS KNEE'S. WHILE INMATE  
18 MURRILLO, CONTINUED TO PUNCH THE PLAINTIFF <sup>IN</sup> THE SIDE OF  
19 THE FACE AND HEAD, IT IS CLEAR THAT THE PLAINTIFF IS  
20 BEING VICTIMIZED BY INMATE MURRILLO, BECAUSE WHEN  
21 DEFENDANT G.ARNETT, FIRED HIS FIRST ROUND IT HIT PLAINTIFF  
22 IN THE LOWER LEFT LEG BREAKING IT IN HALF AND  
23 PUTTING PLAINTIFF DOWN ON HIS HANDS AND KNEE'S.

24 AS INMATE MURRILLO, CONTINUES TO PUNCH THE PLAINTIFF HARD  
25 DEFENDANT ARNETT, FIRES A SECOND ROUND HITTING THE PLAINTIFF  
A SECOND TIME WHILE HE WAS DOWN ON HIS KNEE'S AND BEING  
REPEATEDLY PUNCHED IN THE FACE AND HEAD BY INMATE MURRILLO  
WITH INMATE MURRILLO, MEXICAN BUDDIES CHANTING ON THE GROUND  
FLOOR, THROW HIS SS OFF THE TIER!

26 THIS INMATE BEING TWICE THE PLAINTIFF SIZE AND THE  
27 PLAINTIFF FEELING WEAK, THE PLAINTIFF WRAP HIS ARMS

1 AROUND INMATE MURRILLO, LEGS AND PRESSED MY FACE INTO  
2 MURRILLO'S, LEGS TIGHT AS I COULD, CAUSE THE PLAINTIFF NOT BEING  
3 SURE HOW MANY MORE PUNCHES I COULD STAND.

4 NOW THE EVENT IS STARTING TO CLEARLY SHOW AND ESTABLISH  
5 A VIOLATION OF THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE  
6 OF THE FEDERAL CONSTITUTION'S EIGHTH AMENDMENT BASED ON  
7 EXCESSIVE USE OF FORCE BY THIS PRISON OFFICER.

8 INMATE MURRILLO, CONTINUES PUNCHING THE PLAINTIFF, THE  
9 PUNCHES ARE NOW LANDING ON THE BACK OF MY HEAD AND  
10 NECK. DEFENDANT ARNETT, FIRE'S A THIRD ROUND THIS TIME  
11 HITTING ME ON THE RIGHT SIDE OF MY BUTTOCKS.

12 DEFENDANT ARNETT, AS WELL AS PRISON OFFICERS WORKING UNDER  
13 THE COLOR OF THE LAW HAVE A SWORN DUTY TO PROVIDE ALL  
14 INMATES A SAFE AND NONE "DANGEROUS-HAZARDOUS" LIVING  
15 CONDITION. THIS SWORN DUTY IS ALSO TO PROTECT THE PLAINTIFF

16 FROM BEING ASSAULTED BY OTHER INMATES. IN WHICH THIS  
17 PRISON OFFICER WHILE ACTING UNDER THE COLOR OF LAW WATCHED  
18 INMATE MURRILLO TRAVEL FROM ONE SIDE OF THE BUILDING  
19 WHILE HIS NOSE AND FACE WAS BLEEDING AND WITHOUT  
20 WARNING WALK UP TO THE PLAINTIFF AS IF HE WAS PASSING  
21 BY AND WITHOUT WARNING SUCKER PUNCH THE PLAINTIFF ASSAULTING  
22 HIM WITH A PUNCH HARD ENOUGH TO DAZE THE PLAINTIFF AND

23 INSTEAD OF TAKING ACTIONS TO PROTECT THE PLAINTIFF FROM  
24 THE REPEATEDLY PUNCHES OR ASSAULT THE CONTEMPORARY STANDARDS  
25 OF DECENCY WAS VIOLATED WHEN THE DEFENDANT ARNETT,  
RELOADED HIS 40MM LAUNCHER AND MALICIOUSLY AND SADISTIC-

26 ALLY USE EXCESSIVE FORCE BY AIMING AND FIRING AT THE  
27 PLAINTIFF SECOND TIME WHEN THE PLAINTIFF WAS CLEARLY  
28

1 THE VICTIM.

2 THE PLAINTIFF UNABLE TO STAND OR DEFEND HIMSELF, INMATE  
3 MURRILLO, CONTINUE TO PUNCH THE PLAINTIFF IN THE HEAD  
4 AND FACE AREA. THE PLAINTIFF ON HIS KNEE'S ATTEMPTING TO  
5 COVER HIS FACE AND HEAD FROM THE PUNCHES OF MURRILLO,  
6 WITH THE DEFENDANT ARNETT REPEATEDLY RELOADING HIS  
7 WEAPON AND SHOOTING AT THE PLAINTIFF WHO IS THE VICTIM.  
8 STANDARDS OF BEING TREATED WITH DECENTRY BY THE DEFENDANT  
9 ARNETT, FELL WELL BELOW HUMAN. INMATE MURRILLO IS THE  
10 AGGRESSOR AND NOT ONE TIME HAS HE BEEN SHOT OR SHOT AT.  
11 EVERY SHOT FIRED THE PLAINTIFF FELT IT. AFTER DEFENDANT  
12 ARNETT HAD FIRED AND SHOT THE PLAINTIFF (3) THREE TIMES AND  
13 OFFICERS WERE IN THE Building NOW RESPONDING TO THE ALARM  
14 DEFENDANT ARNETT, YELLED OUT THE WINDOW GET DOWN!  
15 THE ABOVE STATED FACT OF COGNIZABLE LEGAL THEORY AND  
16 I MUST REPEAT "ACTUAL FACT" OF DEFENDANT ARNETT  
17 UNNECESSARY AND WANTON INFILCTION OF PAIN ON THE PLAINTIFF  
18 BY LOADING AIMING AND FIRING HIS WEAPON A 40 MM RIOT GUN  
19 AND HITTING THE PLAINTIFF NOT ONCE! NOT TWICE! BUT (3)  
20 THREE TIMES AND THE PLAINTIFF BEING THE VICTIM OF THE  
21 BEATING BY MURRILLO IS SURELY A 8<sup>TH</sup> AMENDMENT  
22 CLAIM SUFFICIENT UNDER THE COGNIZABLE LEGAL THEORY  
23 OF BALISLERI V. PACIFICA POLICE DEPT. 901 F. 2d 696, 699 (9<sup>th</sup> Cir. 1990)

25 SECOND CAUSE OF ACTION

26 DEFENDANT SGT. ROMO, VIOLATED PLAINTIFF'S EIGHTH AMENDMENT  
27 RIGHTS TO BE FREE OF UNJUSTIFIED "EXCESSIVE FORCE", "CRUEL  
28 AND UNUSUAL PUNISHMENT".

ON 11-28-2013

1 I PLAINTIFF KEVIN SIMMONS, WAS THE VICTIM OF A ASSAULT  
2 BY ANOTHER INMATE AND CORRECTIONAL OFFICER G. ARNETT,  
3 DEFENDANT ARNETT, SHOT PLAINTIFF (3) THREE TIMES.  
4 THE FIRST SHOT BROKE PLAINTIFF'S LEG IN HALF (Tibia And Fibula)  
5 MAKING IT IMPOSSIBLE FOR PLAINTIFF TO STAND OR WALK.  
6 SGT. ROMO, WAS THE FIRST SGT. TO ARRIVE ON THE SCENE. AS  
7 SGT. ROMO, ENTERED C4 BLD. HE SCREAMED AT DEFENDANT  
8 ARNETT, WHAT THE F---! IS ALL OF THESE INMATES DOING  
9 OUT OF THEIR CELL? LOCK THESE M---F---! UP RIGHT  
10 NOW. "HE FAILED TO TAKE THE NAMES OF THE INMATES ON THE  
11 TIER". SGT. ROMO, ORDERED THE C/O'S TO DRAG THE PLAINTIFF  
12 DOWN THE TIER AND THEY COMPLIED. "HE DIDN'T CARE ABOUT  
13 THE PLAINTIFF'S LEG HANGING IN HALF." SGT. ROMO, ORDERED  
14 THE C/O'S TO DRAG PLAINTIFF DOWN THE STAIRS BUT  
15 SGT. SEBOK, INTERVENED AND DEMANDED THAT I BE  
16 PLACED ON A GURNEY. SGT. SEBOK, ASKED THE PLAINTIFF HOW  
17 DID HIS PANTS GET WET AND PLAINTIFF RESPONDED THAT  
18 "I SAT IN THE WATER BY THE SHOWER".  
19 SGT. ROMO, INSTRUCTED DEFENDANT NURSE LOPEZ, TO CHANGE  
20 (NO COMMENT) TO ("I HURT MY LEG WHEN I SLIPPED IN  
21 WATER.") I MADE SGT. ROMO, AWARE OF THE FACT THAT  
22 I WAS ALSO SHOT ON MY BACK SIDE. MY JACKET AND  
23 SHIRT WAS REMOVED AND SGT. ROMO, INSTRUCTED  
24 DEFENDANT NURSE LOPEZ, THAT SHE WAS WASTING HER TIME  
25 AND THAT I WASN'T SHOT. SGT. ROMO, ORDERED NURSE  
26 LOPEZ, TO FILE A FALSE Y219 MEDICAL REPORT. SGT. ROMO,  
27 COERCED DEFENDANT NURSE LOPEZ, INTO COVERING UP THE  
28 FACTS THAT DEFENDANT ARNETT, SHOT THE PLAINTIFF (3)

1 TIMES DELIBERATELY WITH THE INTENT TO CAUSE HARM.

2 SGT. ROMO, ALSO HAS AND HAD HIS ACTIONS ON VIDEO TAPES,  
3 AND NOW THAT TAPE CAN'T BE LOCATED. SGT. ROMO,  
4 PARTICIPATED IN THIS INCIDENT FROM START TO FINISH  
5 AND NOW THERE IS NO RECORD OF HIS ACTIONS OR  
6 PARTICIPATION AT ALL. SGT. ROMO, GAVE ORDERS TO INMATES  
7 AS WELL AS CORRECTIONAL OFFICERS, BUT THE PLAINTIFF IS  
8 BEING DENIED THE FACTS THAT SGT. ROMO, WAS PRESENT  
9 FOR ANY PART OF THE INCIDENT.

10 "DENIAL OF PROCEDURAL DUE PROCESS", SGT. ROMO, FAILED TO  
11 REPORT THE EXCESSIVE FORCE OF DEFENDANT ARNETT, AND  
12 WENT AS FAR AS COVERING UP THE (3) GUN SHOT WOUNDS  
13 FOR DEFENDANT ARNETT. SGT. ROMO, HAS A DUTY TO  
14 REPORT HIS OBSERVATION AND PARTICIPATION IN PLAINTIFF'S  
15 EXCESSIVE FORCE CLAIM.

16

17 THIRD CAUSE OF ACTION

18 "INADEQUATE MEDICAL CARE".

19 "DELIBERATE INDIFFERENCE".

20

21 DEFENDANT NURSE M. LOPEZ, VIOLATED PLAINTIFF'S EIGHTH AND  
22 FOURTEENTH AMENDMENT RIGHTS TO BE FREE OF CRUEL AND  
23 UNUSUAL PUNISHMENT.

24

25 ON 11-28-2013, AT APPROXIMATELY 10:05  
A.M. THE PLAINTIFF KEVIN SIMMONS, WAS THE VICTIM  
26 OF A ASSAULT BY ANOTHER INMATE AND CORRECTIONAL  
27 OFFICER G. ARNETT. OFFICER G. ARNETT, SHOT PLAINTIFF (3) TIMES.  
28 THE FIRST SHOT BROKE PLAINTIFF'S (FIBIA AND FIBULA) COMPLETELY

1 IN HALF CAUSING PLAINTIFF'S LEFT LEG TO FLOP/FOLD INTO TWO  
2 PIECES. DEFENDANT NURSE M. LOPEZ, LVN WAS THE TREATING  
3 NURSE. NURSE LOPEZ, ASKED THE PLAINTIFF WHAT HAPPENED TO  
4 CAUSE THE INJURY AND PLAINTIFF RESPONDED (NO COMMENT)  
5 PLAINTIFF NEVER REFUSED ANY TREATMENT. SGT. ROMO, INSTANCED  
6 NURSE LOPEZ, TO CHANGE THE PLAINTIFF'S STATEMENT FROM  
7 (NO COMMENT) TO ("I HURT MY LEG WHEN I SLIPPED IN  
8 WATER"). PLAINTIFF INFORMED SGT. ROMO, AND NURSE LOPEZ,  
9 THAT HE WAS SHOT ON HIS BACK SIDE. NURSE LOPEZ, HAD THE  
10 PLAINTIFF'S JACKET AND SHIRT REMOVED. SGT. ROMO, TOLD NURSE  
11 LOPEZ, THAT SHE WAS WASTING HER TIME AND THAT THE  
12 PLAINTIFF WASN'T SHOT.

13 NURSE LOPEZ, THEN COMPLETED THE 7219 MEDICAL FORM WITH  
14 FALSE STATEMENTS BY DOING THE FOLLOWING; 1. ON INJURIES FOUND  
15 SITE CIRCLED NUMBER 11 PAIN IN LOWER LEFT LEG, INSTEAD  
16 OF NUMBER 3 BROKEN BONES. 2. SHE FAILED TO TREAT  
17 PLAINTIFF FOR GUN SHOT WOUNDS TO HIS RIGHT THIGH AND  
18 BUTTOCK, WHICH WAS BLEEDING. 3. SITE FALSIFIED THE 7219  
19 MEDICAL FORM BY SAYING THAT THE PLAINTIFF HAD NO  
20 INJURIES ON HIS BACK SIDE.

21 ON 11-28-2013, PLAINTIFF WENT TO PALMDALE REGIONAL HOSPITAL  
22 TO HAVE SURGERY ON THE BROKEN BONES IN HIS LEFT LEG THAT  
23 NURSE LOPEZ, TRIED TO DOWNPLAY.

24 ON 12-1-2013, WHILE BEING TREATED BY THE PALMDALE SKIN  
25 ASSESSMENT (3) DAY AFTER BEING SHOT BY DEFENDANT  
26 G. ARNETT, THE MEDICAL STAFF HAD TO PRY THE PLAINTIFF'S  
27 UNDERWEAR AND ATHLETIC SHORTS OFF OF HIS BLOODY THIGH  
28 AND BUTTOCK. THE REFUSAL BY NURSE LOPEZ, TO TREAT PLAINTIFF'S  
(8)

1       WOUNDS CAUSED HIM "UNNECESSARY AND WANTON INFILCTION  
2       OF PAIN."

3       PLAINTIFF UNDERSTAND THAT NURSE LOPEZ, ONLY DID AS  
4       SGT. ROMO, INSTRUCTED HER TO DO, BUT AS A MEDICAL STAFF  
5       SITE HAS A OATH TO UP HOLD AND SGT. ROMO, IS NOT HER  
6       SUPERVISOR.

7       FOR APPROXIMATELY (3) HOURS THE PLAINTIFF WAS PUT THROUGH  
8       EXTREM PAIN AND SUFFERING AS THE (3) DAY old BLOODY  
9       UNDERWARE WAS PRIED FROM HIS GUN SHOT WOUNDS THAT  
10      NURSE LOPEZ, REFUSED TO TREAT.

11      THE 7219 MEDICAL REPORT PREPARED BY NURSE LOPEZ, WAS  
12      FALSIFIED TO COVER UP DEFENDANT'S ARNETT, SHOOTING PLAINTIFF.  
13      PALMDALE REGIONAL HOSPITAL CONTRADICTS EVERY WORD THAT  
14      NURSE LOPEZ, STATED IN HER REPORT.

15      DR. HA, ALSO ORDERED FOR THE PLAINTIFF'S DRESSINGS TO BE CLEANED  
16      AND CHANGED ON A REGULAR BASIS ONCE HE RETURNED BACK  
17      TO THE PRISON FROM THE HOSPITAL.

18      "PLEADING STANDARD"

19      SECTION 1983 "PROVIDES A CAUSE OF ACTION FOR THE DEPRIVATION  
20      OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION  
21      AND LAWS OF THE UNITED STATES." WILDER V. VIRGINIA HOSPITAL ASSN., 496  
22      U.S. 498, 503 (1990) (QUOTING 42 U.S.C § 1983). SECTION 1983 IS NOT ITSELF  
23      A SOURCE OF SUBSTANTIVE RIGHTS, BUT MERELY PROVIDES A METHOD FOR  
24      VINDICATING FEDERAL RIGHTS CONFERRED ELSEWHERE. GRAHAM V. CONNER,  
25      490 U.S. 386, 393 - 94 (1989).

26      TO STATE A CLAIM UNDER § 1983, A PLAINTIFF MUST ALLEGE TWO  
27      ESSENTIAL ELEMENTS: (1) THAT A RIGHT SECURED BY THE CONSTITUTION  
28      OR LAWS OF THE UNITED STATES WAS VIOLATED AND (2) THAT THE

1 ALLEGED VIOLATION WAS COMMITTED BY A PERSON ACTING UNDER THE  
2 COLOR OF STATE LAW. SEE WEST V. ATKINS, 487 U.S. 42, 48 (1988);

3 KETCHUM V. ALAMEDA COUNTY, 811 F.2d 1243, 1245 (9th Cir. 1990)

4 THE EIGHTH AMENDMENT PROTECTS PRISONERS FROM HUMANE METHODS  
5 OF PUNISHMENT AND FROM HUMANE CONDITIONS OF CONFINEMENT.

6 MORGAN V. MORGENSEN, 465 F.3d 1041 (9th Cir. 2006). ALTHOUGH PRISON

7 CONDITIONS MAY BE RESTRICTED AND HARSH, PRISON OFFICIALS MUST PROVIDE  
8 PRISONER WITH FOOD, CLOTHING, SHELTER, SANITATION, MEDICAL CARE AND  
9 PERSONAL SAFETY. FARMER V. BRENNAN, 511 U.S. 825, 832-33 (1994)  
(CITATION OMITTED).

10 PRISON OFFICIALS HAVE A DUTY TO TAKE REASONABLE  
11 STEPS TO PROTECT FROM PHYSICAL ABUSE. FARMER, 511 U.S. AT 833.

12 PLAINTIFF HAS CLEARLY BEEN VICTIMIZED BY DEFENDANTS ARNETT, SGT.  
13 ROMO, AND NURSE LOPEZ, TO ESTABLISH A VIOLATION OF THIS DUTY,  
14 THE PRISONER MUST ESTABLISH THAT PRISON OFFICIALS WERE "DELIBERATELY  
15 INDIFFERENT" TO SERIOUS THREATS TO THE INMATE'S SAFETY. Id. AT 834.  
16 "MERE NEGLIGENCE IS NOT SUFFICIENT TO ESTABLISH LIABILITY. FROST V.

17 AGNUS, 152 F.3d 1124, 1128 (9th Cir. 1998).

18 RATHER, A PLAINTIFF MUST SET FORTH FACTS TO SHOW THAT DEFENDANT  
19 KNEW OF, BUT DISREGARDED, AN EXCESSIVE RISK TO INMATE SAFETY.

20 FARMER, 511 U.S. AT 837. THAT IS, "THE OFFICIAL MUST BOTH BE AWARE  
21 OF FACTS FROM WHICH THE INFERENCE COULD BE DRAWN THAT A  
22 SUBSTANTIAL RISK OF SERIOUS HARM EXISTS, AND HE MUST ALSO DRAW  
23 THE INFERENCE." Id. PLAINTIFF STATES THAT DEFENDANTS ARNETT, SGT.

24 ROMO AND NURSE LOPEZ, HAD KNOWLEDGE OF THE FACT THAT  
25 PLAINTIFF WAS SHOT (3) TIMES BY DEFENDANT ARNETT, BUT

26 FAILED TO ACT IN A PROFESSIONAL MANNER SUCH AS  
27 PROVIDING THE PROPER MEDICAL CARE. "INADEQUATE MEDICAL CARE".

28 SGT. ROMO, COERCED NURSE LOPEZ, TO DEPRIVE PLAINTIFF OF

1 HIS RIGHTS TO BE TREATED FOR THE (3) GUN SHOT WOUNDS THAT  
2 HE RECEIVED AT THE HANDS OF DEFENDANT ARNST. A CLAIM OF  
3 MEDICAL INDIFFERENCE REQUIRES (1) A SERIOUS MEDICAL NEED,  
4 AND (2) A "DELIBERATELY INDIFFERENT" RESPONSE BY DEFENDANT.  
5 JETT V. PENNER, 439 F.3d 1071, 1096 (9TH CIR. 2006).

6 A SERIOUS MEDICAL NEED MAY BE SHOWN BY DEMONSTRATING  
7 THAT "FAILURE TO TREAT A PRISONER'S CONDITION COULD RESULT IN  
8 FURTHER SIGNIFICANT INJURY OR THE "UNNECESSARY AND WANTON  
9 INFILCTION OF PAIN". Id.; SEE ALSO Mc GUCKIN V. SMITH, 974 F.2d  
10 1050 - 1059 - 60 (9TH CIR. 1992). THE DELIBERATE INDIFFERENCE STANDARD  
11 IS MET BY SHOWING (a) A PURPOSEFUL ACT OR FAILURE TO RESPOND TO  
12 A PRISONER'S PAIN OR POSSIBLE MEDICAL NEED AND (b) HARM CAUSED  
13 BY THE INDIFFERENCE.

14 HERE THE PLAINTIFF WAS SHOT WITH THE 40 MM. (3) TIMES, THE  
15 FIRST SHOT BROKE HIS LEG COMPLETELY IN HALF AND THE  
16 SECOND SHOT TOOK A CHUNK OF SKIN OFF THE PLAINTIFF'S  
17 RIGHT THIGH AND THE THIRD SHOT TOOK A CHUNK OF SKIN  
18 OFF HIS RIGHT BUTTOCK, DEFENDANT SGT. ROME ORDERED  
19 NURSE LOPEZ, TO DISREGARD MY INJURIES AND PLAINTIFF  
20 SPENT (3) DAYS BLEEDING FROM THE RIGHT THIGH AND BUTTOCK.  
21 PLAINTIFF'S MEDICAL RECORDS SUPPORTS CLAIM.

22 "LINKAGE". UNDER § 1983, PLAINTIFF MUST DEMONSTRATE THAT  
23 EACH NAME DEFENDANT PERSONALLY PARTICIPATED IN THE  
24 DEPRIVATION OF HIS RIGHTS. Iqbal, 556 U.S. 662, 676-77 (2009);  
25 Simmons v. NAVAJO COUNTY, ARIZ. 609 F.3d 1011, 1020-21 (9TH CIR. 2010);  
26 Twing v. CITY OF STOCKTON, 583 F.3d 1218, 1235 (9TH CIR. 2009);  
27 JONES V. WILLIAMS, 297 F.3d 930, 934 (9TH CIR. 2002). LIABILITY  
28 MAY NOT BE IMPOSED ON SUPERVISORY PERSONNEL UNDER

1 THE THEORY OF RESPONDANT SUPERIOR, AS EACH DEFENDANT IS  
2 ONLY LIABLE FOR HIS OR HER OWN MISCONDUCT. Igbal, 556  
3 U.S. AT 676-77; Ewing, 588 F.3d AT 1235. SUPERVISOR MAY  
4 ONLY BE HELD LIABLE IF THEY "PARTICIPATED IN OR DIRECTED  
5 THE VIOLATIONS, OR KNEW OF THE VIOLATION AND FAILED TO  
6 ACT TO PREVENT THEM". Taylor v. List, 880 F.2d 1040, 1045  
7 (9<sup>TH</sup> CIR. 1989); ACCORD STARR V. BACA, 652 F.3d 1202, 1205-08  
8 (9<sup>TH</sup> CIR. 2011); CORALES V. BENNETT, 567 F.3d 554, 570 (9<sup>TH</sup> CIR. 2009);  
9 PRESCHOOLER II V. CLARK CNTY. SCH. BD. OF TRS., 479 F.3d 1175, 1182 (9<sup>TH</sup>  
10 CIR. 2007); HARRIS V. RODERICK, 126 F.3d 1189, 1204 (9<sup>TH</sup> CIR. 1997).  
11 EVERY PUNCH THAT PLAINTIFF RECEIVED FROM HIS ATTACKER  
12 AND EVERY SHOT PLAINTIFF RECEIVED FROM DEFENDANT ARNETT,  
13 PUTS DEFENDANT'S SGT. ROMO, AND NURSE LOPEZ, AT THE  
14 CENTER OF THE LINKAGE BOTH SGT. ROMO AND NURSE LOPEZ  
15 DESTROYED KEY EVIDENCE IN PLAINTIFF'S CASE.

#### REQUEST FOR RELIEF

17 THE LOSS OF CONSTITUTIONAL RIGHTS EVEN FOR A SHORT PERIOD OF TIME  
18 SUCH AS FIVE MINUTES CONSTITUTES IRREPARABLE INJURY IN  
19 MORE WAY THEN ONE, ELRUD V. BURNS, 427 U.S. 347, 373 (1976)  
20 DEERFIELD MEDICAL CENTER V. CITY OF DEERFIELD BEACH, 661 F.2d 328,  
21 338 (5<sup>TH</sup> CIR. 1981).

22 PLAINTIFF NOW HAS A LIFE TIME INJURY FROM THE EXCESSIVE FORCE  
23 OF THE DEFENDANT'S AND PLAINTIFF NOW BELIEVE THAT HE IS  
24 ENTITLED TO THE FOLLOWING RELIEF; DEFENDANT SGT. ROMO \$1,000,000  
25 DEFENDANT NURSE LOPEZ, \$1,000,000  
DEFENDANT ARNETT, \$1,500,000  
FOR MY LIFE LONG INJURY, PAIN AND SUFFERING, AND  
PUNITIVE DAMAGES.

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23	DATE: 4-15-2018
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27	<i>Kevin Simmons</i>
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## DECLARATION

I UNDERSTAND THAT A FALSE STATEMENT OR  
ANSWER TO ANY QUESTIONS IN THIS DECLARATION  
WILL SUBJECT ME TO PENALTIES OF PERJURY.

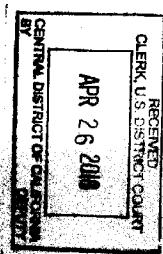
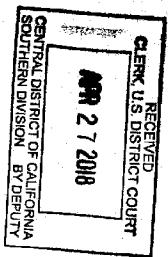
Kevin Simmons

I KEVIN SIMMONS, DECLARE UNDER PENALTY OF PERJURY THAT THE Foregoing IS TRUE AND CORRECT.

DATE: APRIL 15, 2018

Kevin Simmons

KEVIN SIMMERS (P-23096)  
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